

IMPROVING THE CAPABILITY OF TRIBAL GOVERNMENTS
TO REGULATE ENVIRONMENTAL QUALITY PURSUANT
TO FEDERAL AND TRIBAL LAWS

MAY 16 (legislative day, APRIL 18), 1990.—Ordered to be printed

Mr. INOUE, from the Select Committee on Indian Affairs,
submitted the following

REPORT

[To accompany S. 2075]

The Select Committee on Indian Affairs, to which was referred the bill (S. 2075) to improve the capability of tribal governments to regulate environmental quality pursuant to Federal and tribal laws, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

PURPOSE

The purpose of S. 2075 is to improve the capability of tribal governments to regulate environmental quality pursuant to Federal and tribal laws.

BACKGROUND

In the first session of the 101st Congress on June 23, 1989, the Select Committee on Indian Affairs held an oversight hearing on the Administration of Indian Programs by the Environmental Protection Agency. At the hearing the Committee received testimony from Federal officials and tribal leaders regarding the need for Federal assistance for the development of tribal programs. Among the more important needs identified was the need for assistance to train professional staff to monitor and enforce tribal environmental laws. Indian tribes testified that the Environmental Protection Agency did not provide sufficient resources for Indian tribes to hire adequately trained staff for tribal environmental programs. In many cases, the grant awards from the Environmental Protection

Agency were not sufficient to even hire one professionally trained staff person for tribal environmental regulatory programs. In addition, many Indian tribes testified as to the lack of adequate data for tribes to begin to develop environmental statutes and establish environmental quality standards for their reservations. Indian tribes indicated a need for funds to conduct the necessary studies to identify sources of pollution on their reservations and to determine the impact on existing environmental quality. Many tribes indicated that the lack of adequate resources has delayed tribal efforts to develop and implement tribal environmental programs. The Committee also received testimony from Federal and tribal officials regarding a wide variety of tribal environmental programs that have been established largely without Federal funds to combat problems of hazardous waste dumping on reservation lands, pesticides leaching into groundwater aquifers, illegal discharges into reservation water systems, and uranium mill tailings largely untreated on reservation lands.

On February 6, 1990, Senator McCain introduced S. 2075, the Indian Environmental Regulatory Enhancement Act. This bill would authorize the Administration for Native Americans (ANA), in the Department of Health and Human Services, to award grants to Indian tribes for the purpose of improving the capability of tribal governments to regulate environmental quality pursuant to Federal and tribal laws. These funds could be used for employee training and education, tribal code development, as well as improved enforcement and monitoring. Under S. 2085 the grants would be awarded competitively. The grant program would require a 25% tribal match which could be from any other funding source, including other Federal funds. Indian tribes could also match the funds awarded under this grant program with services or in-kind property. Finally, the Act authorizes \$5,000,000 to be appropriated for each of the fiscal years 1991, 1992, 1993, 1994, 1995 and 1996.

On April 24, 1990, the Select Committee on Indian Affairs held a hearing on S. 2075, the Indian Environmental Regulatory Enhancement Act. At this hearing the Committee received testimony from several tribal officials in support of Federal assistance for environmental programs provided for in S. 2075. The Administration for Native Americans provided testimony that supported the objectives of S. 2075 to increase tribal programmatic capabilities to effectively administer environmental regulatory programs. A representative of the Administration for Native Americans, however, testified that the provisions in S. 2075 are unnecessary because ANA already has the authority to make grants to Indian tribes for these purposes. At the same time, ANA acknowledged that it has provided only \$1 million in grants to tribes since 1985 in the area of environmental quality. All of these grants were for code development. Tribal witnesses have indicated a need for more than \$20 million in annual ANA funding for the purposes authorized by S. 2075. All witnesses agreed that ANA should play a greater role in assisting tribal efforts to develop regulatory capability.

COMMITTEE AMENDMENT

On May 1, 1990, the Committee adopted an amendment to S.2075, the Indian Environmental Regulatory Enhancement Act. This amendment would change the requirement of a tribal match from 25 percent of the grant award to 20 percent of the grant award. The amount of the ANA grant would likewise be increased from 75 percent to 80 percent of the costs associated with the planning, development and implementation of tribal programs to regulate environmental quality. The Administration for Native Americans testified before the Committee that all of the grants administered by ANA require a 20 percent tribal match. Therefore, this amendment would make the Indian Environmental Regulatory Enhancement Act grants program consistent with all other grant programs administered by the Administration for Native Americans.

The amendment adopted by the Committee would also increase the amount of the authorization in the Indian Environmental Regulatory Enhancement Act to \$8,000,000. The amendment reflects recommendations received by the Committee from Federal officials and Indian tribes at both the April 24th hearing and testimony received at the June 23rd hearing where testimony was received as to the need for increased resources to Indian tribes for environmental regulatory programs. Indian tribes have indicated a need for more than \$20 million in annual ANA funding. All of the witnesses that appeared before the Committee agreed that ANA should play a greater role in assisting tribal efforts to develop regulatory capability.

LEGISLATIVE HISTORY

S. 2075 was introduced on February 6, 1990 by Senator McCain, for himself and Senators Burdick, Conrad, and Inouye and was referred to the Select Committee on Indian Affairs. The Committee held a hearing on S. 2075 on April 24, 1990.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

In open business session on May 1, 1990, the Select Committee on Indian Affairs, by a unanimous vote of a quorum present, ordered the bill, with an amendment, reported with the recommendation that the Senate adopt the bill as amended.

SECTION-BY-SECTION ANALYSIS

SECTION 1

Section 1 cites the short title of the Act as the "Indian Environmental Regulatory Enhancement Act of 1990."

SECTION 2

Section 2 amends Section 803(d)(1) of the Native American Programs Act of 1974 by providing for the award of grants to Indian tribes for the purpose of funding 80 percent of the costs of developing, and implementing tribal programs to regulate environmental quality pursuant to Federal and tribal environmental laws.

Subsection (d)(2) sets out the purposes for which the funds may be used. These purposes include training and education of employees, development of tribal laws, and the enforcement and monitoring of environmental quality laws.

Subsection (d)(3) provides that the 20 percent match which is required under this Act can be paid in cash or through the provision of property or services. The cash or property contribution can be from any source, including any other Federal agency.

SECTION 3

Section 3 amends Section 816 of the Native American Programs Act of 1974 by adding a new section which authorizes the appropriation of \$8,000,000 for each of the fiscal years 1991, 1992, 1993, 1994, 1995, and 1996 to carry out the purposes of this Act.

COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 2075, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 7, 1990.

Hon. DANIEL K. INOUE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2075, the Indian Environmental Regulatory Enhancement Act of 1990, as ordered reported by the Senate Select Committee on Indian Affairs, May 1, 1990.

This bill would authorize the Secretary of Health and Human Services to provide grants to Indian tribes for the regulation of environmental quality. Grants could be used for training and education, the development of tribal laws on environmental quality, and the enforcement of environmental quality laws. The bill authorized the appropriation of \$8 million per year from 1991 to 1996. Assuming appropriation of the full amounts, CBO estimates that this would result in outlays of \$3 million in 1991 and \$8 million per year thereafter.

S. 2075 would not impose costs on tribal governments, but would require matching contributions for the federal grants. Tribes would be required to contribute 20 percent of total project costs, in cash, property, or services, for an annual cost of about \$1 million in 1991 and \$2 million thereafter.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marta Morgan, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carry-

ing out the bill. The Committee believes that S. 2075 will have minimal regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The only communications received by the Committee from the Executive Branch with respect to S. 2075 was in the form of testimony from the Administration for Native Americans. Set forth below is the testimony of the Honorable S. Tim Wapato, Commissioner of the Administration for Native Americans of the Department of Health and Human Services, on April 24, 1990:

STATEMENT BY S. TIM WAPATO, COMMISSIONER, ADMINISTRATION FOR NATIVE AMERICANS, OFFICE OF HUMAN DEVELOPMENT SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. Chairman and Members of the Committee, thank you for the opportunity to present the views of the Administration on S. 2075, the Indian Environmental Regulatory Enhancement Act of 1990. As Commissioner of the Federal agency which has its major purpose promoting self-sufficiency for Native Americans, I am particularly pleased to testify before this Committee.

This bill would establish a new grant program authorized at \$5 million per year for each of the next six fiscal years under section 803 of the Native American Programs Act of 1974. Grants could be awarded to Indian Tribes for planning, developing and implementing programs designed to improve the capability of the governing body of the Indian Tribe to regulate environmental quality pursuant to Federal and Tribal environmental laws. Grants awarded under this new subsection may be used for the following purposes: training and education of employees responsible for enforcing or monitoring compliance with environmental quality laws; the development of tribal laws on environmental quality; and the enforcement and monitoring of environmental quality laws.

Promoting effective government-to-government relations between elected tribal leadership and the Federal government has been national policy for two decades. Commitment to self-determination for Indian tribes was enacted into Federal law in 1975 through the Indian Self-Determination and Education Assistance Act. Previous policy resulted in a weakening of tribal government. Emphasizing and restoring control and direct funding to tribal governments is a significant aspect of this Administration's Indian policy.

The Administration for Native Americans (ANA) supports Indian tribal self-determination activities through our social and economic development strategies (SEDS) policy. This policy requires that the social, economic and governance needs of Native American communities must be designed and undertaken by the communities themselves. The basic financial assistance grants awarded by

ANA are to entities demonstrating prospects for effective implementation of community-based, long-term governance and social and economic development projects, thus strengthening tribal governments.

Strengthening tribal governments is, in my view, a central theme of the Indian Environmental Regulatory Enhancement Act. Its focus on a specific need—the need to help tribes strengthen their capacity to deal with environmental quality—is responsive to a significant problem affecting tribal governments.

We are all familiar with the developing hazards in our environment. Concern with air, water, solid waste disposal, and industrial contamination has been growing within our Nation for a number of years. For many tribes, the environmental impact of adjoining development has been serious. Unsafe drinking water, air pollutants, toxic waste spills, and hazardous waste proliferation on reservations may be traced to adjacent areas such as in Santa Ana (NM) where a gypsum factory was built just outside the tribal boundary. For the significant number of tribes positioned near bodies of water—whether ocean, lake or stream—the dangers of disease developed through the wastes created by normal human and industrial activities is substantial, not only because of the use of the water itself but also because fishing and fishery development is a mainstay of reservation life.

The externally generated risks caused by non-Indian entities, as well as the internally generated dangers resulting from Tribal economic development and Indian population increases, present a serious challenge to establishing quality environmental standards suitable to the changing needs of Indian reservations.

At the same time, the economic activities undertaken by tribes to increase income and employment also may promote environmental problems. Whether associated with uranium mining or chemicals manufacture, or the obvious need of a safe work place in more standard manufacturing environments such as the Blackfeet Pencil Company in Montana, or the Turtle Mountain Chippewa trailer factory in South Dakota, tribes need and want to ensure healthy and safe environments for tribal members. Further, for the substantial number of American Indian tribes among which agriculture remains a significant economic activity, control of pesticides may be a critical factor for continued economic viability.

Equally disturbing is the identification of a number of tribal entities which are out of compliance with Federal standards. The valiant and successful efforts of the Indian Health Service, which has made significant inroads towards improving health on reservations, are jeopardized by toxic hazards and unclean water.

Clearly, tribes need the necessary expertise to establish, monitor, and enforce laws supporting environmental quality. We all clearly understand that nationwide education

and training of a highly technical nature is necessary for the identification of environmental threats, the analysis of environmental quality, and the enforcement of appropriate standards. Tribal members working for tribal governments should receive education and technical assistance in these areas. The proposed legislation attempts to respond to these needs.

Numerous tribes have noted the significance of the environment as a factor in their development plans. Since 1985, ANA has awarded nearly one million dollars to approximately 20 grantees for the establishment of environmental codes. For example, the Southern Ute Indian Tribe of Colorado received a grant for a natural resource data base and management project. Among other purposes, this project aimed to develop environmental policies relative to energy and land development and assume regulatory responsibilities for water use policies. In Idaho, the Coeur D'Alene Tribe designed a project to help establish environmental protection codes to provide a legal basis for control of land development and to maintain and control water quality. Other tribes have included environmental protection standards in their general tribal business codes.

Therefore, while the Administration supports the goal of this legislation, which would help improve the capability of Indian tribal bodies to regulate their environmental quality, we believe that generally the purposes of this legislation could be achieved under the existing authority of the Native American Programs Act and therefore, S. 2075 is unnecessary. Further, Indian Tribes that qualify for treatment as States are already eligible to receive grant funding and administer environmental programs under most EPA environmental statutes.

The Administration for Native Americans has supported, and will continue to support, tribal needs for assistance in strengthening tribal government capacity to deal with environmental quality.

Thank you for the opportunity to present the views of the Administration on the proposed Indian Environmental Regulatory Enhancement Act.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that enactment of S. 2075 will result in the following changes in existing law:

Section 803 of the Native American Programs Act of 1974 (42 U.S.C. § 2991b) is amended by adding at the end thereof the following new subsection:

(d)(1) The Secretary shall award grants to Indian tribes for the purpose of funding 80 percent of the costs of planning, developing, and implementing programs designed to improve the capability of the governing body of the Indian tribe to regulate environmental quality pursuant to Federal and tribal environmental laws.

(2) The purposes for which funds provided under any grant awarded under paragraph (1) may be used include, but are not limited to—

(A) the training and education of employees responsible for enforcing, or monitoring compliance with, environmental quality laws,

(B) the development of tribal laws on environmental quality, and

(C) the enforcement and monitoring of environmental quality laws.

(3) The 20 percent of the costs of planning, developing, and implementing a program for which a grant is awarded under paragraph (1) that are not to be paid from such grant may be paid by the grant recipient in cash or through the provision of property or services, but only to the extent that such cash or property is from any source (including any Federal agency) other than a program, contract, or grant authorized under this title.

(4) Grants shall be awarded under paragraph (1) on the basis of applications that are submitted by Indian tribes to the Secretary in such form as the Secretary shall prescribe.

Section 816 of the Native American Programs Act of 1974 (42 U.S.C. § 2991b) is amended by adding at the end thereof the following new subsection:

(d) There are authorized to be appropriated \$8,000,000 for each of the fiscal years 1991, 1992, 1993, 1994, 1995, and 1996, for the purpose of carrying out the provisions of section 803(d).